93-985

(2)

Supreme Court, U.S.
FILED
NOV 12 1993
OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1993

JOSEPH BENNETT JR.

PETITIONER

V.

INDEPENDENCE BLUE CROSS AND

MANCHESTER INC.

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE JUDGMENT SUPREME COURT OF THE U.S.

APPENDIX (1) of (2) TO

PETITION FOR WRIT OF CERTIORARI

PRO SE

JOSEPH BENNETT JR.
312 HENDERSON AVE.
MILLVILLE, N.J. 08332
PHONE 609-825-5388

73pp

ORIGINAL

Joseph Bennett Jr.
312 Henderson Ave.
Millville, N.J. 08332
Phone 609-825-5388

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C. 20543

Date: 12/09/93

Re: APPENDIX REDUCED TO SIZE SET BY COURT RULES.

NEW INFORMATION CONCERNING A PATTERN OF FRAUD AND AGE DISCRIMINATION BY IBC AS A RESULT OF A SUBPOENA ISSUED TO ME BY THE DEFENDANT ON NOVEMBER 23, 1993 FOR DEPOSITION IN ANOTHER SIMILAR AGE DISCRIMINATION COMPLAINT 93-CV-2528.

REQUEST THAT THE JUDGES OF THE COURT EXCEPT ONE COPY OF ENTIRE COURT FILE IN IT'S ORIGINAL FORM BECAUSE THE COURT DOCKET DID NOT LIST ALL DOCUMENTS SUBMITTED TO THE COURTS. (RELEVANT AND NECESSARY CONCERNING THE ATTITUDE AND ACTION OF THE LOWER COURTS).

PETITION FOR A WRIT OF CERTIORARI.

Joseph Bennett v. Independence Blue Cross and Manchester, USDC for the Eastern District of Pa. CV No. 92-4249

Appeals Court Third Circuit docket No. 93-1550

Appeals Court Third Circuit docket No. 93-1680

Request for re-hearing for appeals No. 93-1550 and 93-1680

Dear Court Clerk:

Thank you for your help and sample petitions. Enclosed you will find the appendix reduced in size to conform to the court rules.

THIS LETTER IS IMPORTANT PART OF MY CASE (copy in appendix 1 of 2) and I request that it be submitted to the Judges concerning a decision to except one copy of my records (duplicate copy of documents submitted to the courts.) IN THEIR ORIGINAL FORM.

It is also important that the Judges read this letter because only days after submitting my PETITION FOR A WRIT OF CERTIORARI to the U.S. Supreme Court, an attorney for IBC served me with a SUBPOENA FOR DEPOSITION IN A SIMILAR AGE DISCRIMINATION COMPLAINT AGAINST THEM, CASE NUMBER 93-CV-2528, (See letters attached).

In becoming aware of this new complaint against IBC, I can SEE HOW DISADVANTAGED I WAS by the District Court when they took away my counsel and deprived me of the opportunity to use the discovery process to show that Fraud has become common place in IBC's continuing efforts to reduce the number of older employees.

Because my request to the court includes a review of the actions of the lower courts, it is relevant and necessary to send one copy of all documents submitted to the lower courts IN THEIR ORIGINAL FORM to insure that this court has access to all documents as they were submitted to those courts. I feel this is necessary and relevant because the DOCKET DID NOT LIST ALL OF THE DOCUMENTS I SUBMITTED to the District Court and my inquiry to the Appeals Court leads me to believe that DOCUMENTS SIGNED IN BY THAT COURT remained in the possession of the Staff Attorneys Office and DID NOT BECOME PART OF MY FILE IN THAT COURT. I feel it is also necessary and relevant because the District Court lied to cover up mistakes and I feel they will continue to do whatever they deem necessary TO COVER UP THEIR ACTIONS and to prevent this case from going to trial.

I have also enclosed one copy of the original appendix used as a source to produce the 40 copies of the 6 X 9 appendix 1 of 2 and 2 of 2. It was very difficult to reduce the size and still maintain readability.

Sincerely,

Joseph Bennett Jr.

I certify that I have provided a copy of this letter, attachments(not already provided), and new appendix to the attorneys listed below.

Bradley T. Beckman
Beckman & Hunt
2900 One Liberty Place 1650 Market Street
Philadelphia, PA 19103-7301

Jeffrey E. Fleming
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

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NEW YORK
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BRUSSELS

WASHINGTON
LOS ANGELES
HARRISBURG
LONDON
FRANKFURT
TOKYO

November 23, 1993

Joseph Bennett
312 Henderson Avenue
Millville, NJ 08332

Re: Horgan v. Independence Blue Cross, et al.

Dear Mr. Bennett:

Pursuant to our recent telephone conversations, I have enclosed a subpoena and witness fee for your appearance at a deposition on Wednesday, January 12, 1994 in the above-referenced case.

Should you have any questions, please contact Sarah Kelly (963-5473) or me (963-5563).

Very truly yours,

Lisa W. Hoffman

Lisa W. Hoffman
Paralegal

cc: Steven R. Wall, Esquire
Sarah A. Kelly, Esquire
Julie A. Uebler, Esquire
John W. Wiggins, Esquire
Mr. Robert Schwartz
David Kraut, Esquire

INDEX TO APPENDIX

ATTACHMENT "A": Page A-1 (1) OF (2)	MEMORANDUM OF DECISION DATED JANUARY 13, 1993 SIGNED BY JUDGE JOSEPH L. MCGLYNN.
ATTACHMENT "B": Page B-1 (1) OF (2)	MEMORANDUM OF DECISION DATED MARCH 2, 1993 SIGNED BY JUDGE JOSEPH L. MCGLYNN.
ATTACHMENT "C": Page C-1 (1) OF (2)	ORDER DATED JUNE 29, 1993 SIGNED BY JUDGE JOSEPH L. MCGLYNN.
ATTACHMENT "D": Page D-1 (1) OF (2)	ORDER DATED AUGUST 12, 1993. STAMPED AUGUST 31, 1993. SIGNED BY JUDGE CAROL LOS MANSMANN.
ATTACHMENT "E": Page E-1 (1) OF (2)	ORDER DATED AUGUST 12, 1993. STAMPED AUGUST 24, 1993. SIGNED BY JUDGE CAROL LOS MANSMANN.
ATTACHMENT "F-1": Page F1-1 (1) OF (2)	ORDER DATED SEPTEMBER 20, 1993. APPEAL NO. 93-1550 SIGNED BY JUDGE CAROL LOS MANSMANN.

ATTACHMENT "F-2": Page F2-1 (1) OF (2)	ORDER DATED SEPTEMBER 20, 1993. APPEAL NO. 93-1680 SIGNED BY JUDGE CAROL LOS MANSMANN.
ATTACHMENT "G": Page G-1 (1) OF (2)	EEOC COMPLAINT DATED JUNE 3,1991.
ATTACHMENT "H": Page H-1 (2) OF (2)	CIVIL COMPLAINT DATED JUNE 22, 1992.
ATTACHMENT "I-1": Page I1-1 (2) OF (2)	LAWYER/BENNETT AGREEMENT DATED JULY 18, 1991.
ATTACHMENT "I-2": Page I2-1 (2) OF (2)	LAWYER NOTES DATED JULY 24, 1992 SUBSTANTIATING MY ALLEGATIONS THAT HE DROPPED THE CASE BECAUSE OF MONEY.
ATTACHMENT "J-1": Page J1-1 (2) OF (2)	LETTER FROM THE COURT DATED JUNE 3, 1993 INDICATING THAT THEY MISTAKENLY SENT THE DECISIONS TO MY FORMER ATTORNEY.
ATTACHMENT "J-2": Page J2-1 (2) OF (2)	LETTER TO THE COURT DATED MAY 1, 1993 INQUIRING WHY A DECISION HAD NOT BEEN MADE.

ATTACHMENT "J-3": Page J-1 (2) OF (2)	LETTER TO THE COURT DATED MAY 20, 1993 EXPRESSING MY OPINION OF WHAT THE COURT HAD DONE TO DISADVANTAGE ME IN THIS MATTER.
ATTACHMENT "K-1": Page K1-1 (2) OF (2)	LETTER FROM DEFENDANT ATTORNEY DATED MAY 7, 1993 WITH THE WRONG DECISION ATTACHED.
ATTACHMENT "K-2": Page K2-1 (2) OF (2)	LETTER FROM DEFENDANT ATTORNEY DATED MAY 17, 1993 WITH THE CORRECT DECISION ATTACHED.
ATTACHMENT "L": Page L-1 (2) OF (2)	LETTER TO THE COURT DATED JUNE 18, 1993 REQUESTING EXTENSION OF TIME AS PER INSTRUCTIONS BY THE APPEALS COURT STAFF ATTORNEY.
ATTACHMENT "M-1": Page M1-1 (2) OF (2)	LETTER TO THE APPEALS COURT DATED 06/04/93 ASKING THE APPEALS COURT TO TAKE AUTHORITY IN DECIDING THE VALIDITY OF MY APPEAL. THE DATE WAS WRONG ON THE LETTER. SHOULD HAVE BEEN 07/04/93.

ATTACHMENT "M-2": Page M2-1 (2) OF (2)	LETTER TO THE APPEALS COURT DATED 07/12/93 INDICATING THAT I DID NOT TRUST THAT EVERYTHING I SUBMITTED TO THE DISTRICT COURT WOULD BE MADE AVAILABLE TO THE APPEALS COURT. I WAS THEREFORE SUBMITTING A COMPLETE COPY OF EVERYTHING I HAD IN MY POSSESSION CONCERNING THE CASE.
ATTACHMENT "N-1": Page N1-1 (2) OF (2)	LETTER TO THE APPEALS COURT DATED 08/30/93 REQUESTING A RE-HEARING APPEAL NO 93-1680.
ATTACHMENT "N-2": Page N2-1 (2) OF (2)	LETTER TO THE APPEALS COURT DATED 09/02/93 REQUESTING A RE-HEARING APPEAL NO 93-1550.
ATTACHMENT "X": SEE INDEX PAGE v. (1) OF (2)	ONE COPY OF THE COMPLETE FILE SUBMITTED TO THE APPEALS COURT.(NOT RETYPED OR REDUCED IN SIZE).

INDEX FOR COPY OF COMPLETE FILE

SUBMITTED TO THE APPEALS COURT

INDEX OF DOCUMENTS PROVIDED:

Docket:

NOTE THAT MY LETTER TO THE COURT DATED 10/27/92 WAS NOT INCLUDED. (See Plaintiff CORR FOR THAT DATE).

COMPLAINT:

FILED WITH THE COURT BY MY FORMER ATTORNEY, MR. JOSEPH TUCKER. ACCORDING TO ATTORNEYS WHO REVIEWED THE COMPLAINT, IT IS CONFUSING AND DOES NOT MEET THE COURT REQUIREMENTS RELATED TO FRAUD. I AM REQUESTING THAT THE COURT ALLOW THIS COMPLAINT TO BE AMENDED TO MEET THE REQUIREMENTS OF THE COURT.

FRAUD:

PENNSYLVANIA SUPREME COURTS INTERPRETATION OF FRAUD FROM JUDGE MCGLYNNS MEMORANDUM OF DECISION DATED MARCH 2, 1993. THE ACTIONS OF IBC MEET JUST ABOUT EVERY INTERPRETATION OF FRAUD IN THIS STATEMENT BY THE PENNSYLVANIA SUPREME COURT.

DETAIL ACCOUNT:

MY LETTERS TO THE EEOC AND MY FORMER LAWYER DESCRIBING, IN DETAIL, THE EVENTS THAT TOOK PLACE PRIOR TO AND AFTER THE FIRING OF THE 39 IBC EMPLOYEES.

TRANSFER/PROBLEMS:

LETTERS AND MEMOS CONCERNING MY TREATMENT AND TRANSFER JUST BEFORE I WAS FIRED.

PRESS RELEASES:

NEWSPAPER ARTICLES RELEASED TO THE PRESS BY CEO, MR. FRED DIBONA STATING THAT OUR JOBS WERE BEING ELIMINATED, THAT WE WERE NOT QUALIFIED, AND IT WAS NOT AN OPTION TO RETRAIN US. NOTE MY GRADES (A'S) "C" AND ADVANCED "C". THE SKILL REQUIRED FOR THIS NEW TECHNOLOGY.

PERFORMANCE REVIEW:

ON A SCALE OF 1 TO 5 WITH 5 BEING THE HIGHEST REVIEW, I WAS CONSISTENTLY EVALUATED AT A 4 (COMMENDABLE) FOR MY ENTIRE 10 YEARS AT IBC.

SALARY INFO:

LAST PAY CHECK AND W2 TAX FORMS.

Q & A SESSIONS:

THIS DOCUMENTS SHOWS THAT IBC HAS TRAINING PROGRAMS IN EVERY AREA OF THE COMPANY. IBC CONTINUES TO TRAIN IT'S EMPLOYEES EVEN IN THE NEW SKILLS THAT THEY SAID WAS NOT AN OPTION IN THE CASE OF THE 39 FIRED EMPLOYEES.

HELP WANTED:

POSTING AND HELP WANTED ADDS ADVERTISING FOR PEOPLE WITH THE SAME SKILLS AS THE FIRED EMPLOYEES. NOTE THAT IBC WAS FILLING MY JOB ONLY DAYS AFTER THE FIRING USING THE SAME AGENCY I WAS USING TO FIND A JOB. THE REQUIREMENTS FOR THE POSITION DID NOT INCLUDE ANY OF THE NEW SKILLS.(SEE ONLINE CAREER SEARCH INC. NOTES)

LETTER TO EEOC:

LETTER WRITTEN TO THE EEOC BY MR. WILLIAM J. BLOUNT. THE STATEMENTS IN THESE LETTERS WERE REPEATED OVER AND OVER AGAIN BY IBC MANAGEMENT. JOBS WERE NOT ELIMINATED AND THE SAME TECHNOLOGY THAT WAS BEING USED BEFORE THE FIRING IS STILL BEING USED BY THE PROCESSING SYSTEMS AT IBC.

EEOC FILES:

A COPY OF THE COMPLAINTS AGAINST IBC BY MYSELF AND OTHER EMPLOYEES. THERE COULD BE MORE COMPLAINTS, BUT WITHOUT THE HELP OF AN ATTORNEY, I WAS UNABLE TO GET ANY MORE INFORMATION. (UNDER SEPARATE COVER BECAUSE OF THE NUMBER OF PAGES.)

AFFIDAVITS:

AFFIDAVITS PROVIDED TO THE COURT FROM ONLY TWO OF THE FORMER EMPLOYEES WHO WERE FIRED BY IBC AS PART OF THE SAME GROUP OF 39 EMPLOYEES. I HAVE TALKED TO A NUMBER OF OTHER FORMER EMPLOYEES AND I GUARANTEE YOU THAT IF I HAD TWENTY AFFIDAVITS, THEY WOULD ALL DESCRIBE SIMILAR TREATMENT AND ACTIONS BY IBC. I INTEND TO CALL ADDITIONAL WITNESSES AT A JURY TRIAL. ADDITIONAL AFFIDAVITS CAN BE PROVIDED UPON REQUEST. ONE OF THE LAWYERS I CONSULTED SAID THAT TWO AFFIDAVITS WAS ENOUGH AT THIS POINT IN TIME.

STAFFING CHARTS:

STAFFING CHARTS THAT SHOW THAT THERE WAS NO REDUCTION IN STAFF AND POSITIONS WERE FILLED WITH YOUNGER LESS QUALIFIED PEOPLE. MY MANAGER AT THE TIME I WAS FIRED WAS NANCY GAVORONE. SEE MY NOTES ON THE FIRST PAGE OF THIS CHART.

ATTORNEYS:

LIST OF ATTORNEYS THAT I TRIED TO RETAIN. COMMENT AND OTHER INFORMATION. THERE WERE MORE ATTORNEYS CONTACTED, BUT I LOST A LIST OF LAWYERS REFERRED BY THE ATTORNEYS ON THE LIST. WITHDRAW MOTION MY FORMER ATTORNEY'S MOTION TO WITHDRAW AS COUNSEL AND COMMENTS. NOTE THAT THE ATTORNEY HAD ACCESS TO MY ENTIRE FILE WHEN HE SUBMITTED HIS MOTION TO WITHDRAW TO THE COURT.

ATTORNEY NOTES:

NOTES BY MY FORMER ATTORNEY SUBSTANTIATING THAT HE WANTED TO RE-NEGOTIATE THE AGREEMENT AND REQUESTED THAT I PAY $4,000 UP FRONT. HE KNEW I WAS NOT WORKING AND COULD NOT FIND ANOTHER JOB. I HAD ALREADY TOLD HIM THAT I DID NOT HAVE ANY MONEY AND THAT IS WHY I ENTERED INTO A CONTINGENCY AGREEMENT. I HAD USED UP ALL MY SAVINGS AND MY UNEMPLOYMENT HAD RUN OUT. HE KNEW ALL THIS, YET HE ASKED ME TO GIVE HIM $4000 FOR EXPENSES. WHEN I COULD NOT COME UP WITH THE MONEY HE SUBMITTED HIS MOTION TO THE COURT TO WITHDRAW AS COUNSEL.

TRANSCRIPTS:

TRANSCRIPTS FROM THE TWO HEARINGS BEFORE JUDGE MCGLYNN.

PLAINTIFF CORR:

MY CORRESPONDENCE AND OTHER DOCUMENTS SUBMITTED TO THE COURT.

DEFENDANT CORR:

THE DEFENDANTS CORRESPONDENCE AND OTHER DOCUMENTS SUBMITTED TO THE COURT.

RELEASE:

RELEASE CONTRACT ADMINISTERED BY IBC.

DECISIONS:

THE TWO DECISIONS HANDED DOWN BY JUDGE MCGLYNN. THE ONE COMMENT THAT I WOULD LIKE TO MAKE IS THAT I CAN NOT BELIEVE THAT JUDGE MCGLYNN WOULD INCLUDE "KNOWINGLY AND VOLUNTARILY" IN HIS DECISIONS. HE JUST DOESN'T

FEEL HE NEEDS TO JUSTIFY OR SUPPORT HIS STATEMENTS IN THESE DECISIONS. ONLY SOMEONE THAT WAS NOT COMPETENT TO ENTER INTO A CONTRACT WOULD "KNOWINGLY AND VOLUNTARILY" ENTER INTO AN AGREEMENT THAT WOULD LET AN EMPLOYER FIRE THEM AND REPLACE THEM WITH A YOUNGER PERSON IN EXCHANGE FOR 14 WEEKS OF SALARY AND BENEFITS. I WASN'T SMART ENOUGH TO REALIZE WHAT IBC WAS DCING, BUT I AM NOT INCOMPETENT. I DON'T FEEL TO BAD ABOUT NOT CATCHING ON, CONSIDERING THAT NONE OF THE OTHER PEOPLE OR THE LAWYERS CONSULTED REALIZED EXACTLY WHAT IBC WAS DOING.

(ATTACHMENT "A")

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. : CIVIL ACTION

v.

INDEPENDENCE BLUE CROSS

and

MANCHESTER, INC. NO. 92-4249

FILED JAN 13 1993

MEMORANDUM OF DECISION

McGLYNN, J.

JANUARY 13, 1993

In this employment termination case, the plaintiff asserts causes of action against the defendants-employer based on violations of the Employee Retirement Income Security Act ("ERISA") 29 U.S.C.

&1140, the age Discrimination in Employment Act, 29 U.S.C. &&621-634, Title VII of the Civil Rights Act of 1964, as well as a state law civil conspiracy claim.

The defendant has moved to dismiss or for summary judgment on the grounds that the claims are barred by a release executed by the plaintiff at the time of his termination. The plaintiff concedes that he signed the release after consulting counsel (transcript of oral argument 12/11/92 p. 23), nevertheless, he contends that the signing of the release was not done knowingly and voluntarily.

For reasons that follow, defendant's motion for summary judgement will be

granted.

ENTERED: 1/14/93

Plaintiff began his employment with Independence Blue Cross (IBC) in March 1980. By September, he was Head Systems Analyst. By reason of a department reorganization, IBC terminated plaintiff's employment effective September 27, 1990. At the time of his termination plaintiff was offered a severance package which included payment of severance benefits through January 3, 1991 and career continuation assistance through and an independent outplacement company, the co-defendant, Manchester, Inc. However, in exchange for this severance package, plaintiff was asked to sign a general release releasing IBC from any and all liability arising out of his

employment with IBC and the termination of his employment by IBC. Plaintiff signed the release on October 2, 1990.

In pertinent part, the release stated:

I, Joseph Bennett, Jr., for an in consideration of the payment of severance pay and such other good and valuable consideration as more fully described in the letter from the Vice President-operating Systems of Independence Blue Cross dated September 27, 1990, to which I had no previous right, and intending to be legally bound, for myself and my successor, heirs, assigns and personal representatives hereby release and forever discharge Independence Blue Cross, its successors, assigns,

subsidiaries, affiliated companies, employees, officers, directors and agents (hereinafter collectively referred to as "IBC") from any and all claims, liabilities, demands, damages and causes of action, known or unknown, fixed or contingent, which I ever had, now have or may have in the future against IBC. This General Release includes but is not limited to claims arising out of my employment and termination therefrom, claims arising under any federal, state or local laws prohibiting employment discrimination and any common law claims now or hereafter recognized including but not limited to the Age Discrimination [in] Employment Act, and/or to claims arising out of any alleged legal restrictions on the right of IBC to terminate my employment specifically.

I further agree that I will not file, charge claim, sue, or cause or permit to be filed, charged or claimed, any action, charge or complaint with any administrative agency or in any court of law, for legal or equitable relief (including damages, injunctive, declaratory, monetary or other relief) involving any matter arising out of my employment or termination of my employment with IBC....

Thereafter, on June 7, Plaintiff filed an age sex discrimination claim with the Equal Employment Opportunity Commission ("EEOC"). On April 30, 1992 the EEOC determined not to proceed with the investigation because it deemed the release to be valid and issued to plaintiff a "Notice of Right to Sue".

This suit followed.

Claims under the ADEA, Title VII, ERISA and state common law may be waived by an employee signing a release.

Alexander v. Gardner-Denver Co. 415 U.S. 36, 52 (1974) (Title VII); Leavitt v. Northwestern Bell Tel. Co., 921 F.2d 160, 162-3 (8th Cir. 1990) (ERISA); American Lumber Corp. v. National R.R. Passenger Corp., 886 F.2d 50, 55-56 (3rd Cir. 1989) (Pennsylvania contract law); Cirillo v. Arco Chem. Co., 862 F.2d 448, 449 (3d Cir. 1988) (ADEA); Coventry v. U.S. Steel Corp., 856 F.2d 513, 518 (3d Cir. 1988) (ADEA and Title VII). To be effective, the waiver must be knowing and voluntary. Coventry, 856 F.2d at 518.

In determining the validity of a waiver, courts apply a totality of circumstances test, which takes into account:

(1) The clarity and specificity of the release language;

(2) The plaintiff's education and business experience;

(3) The amount of time plaintiff had for deliberation before signing the release;

(4) Whether plaintiff knew or should have known his rights upon execution of the release.

(5) Whether the plaintiff was encouraged to seek, or in fact received, the benefit of counsel;

(6) Whether there was an opportunity for negotiation of the terms of the agreement; and

(7) Whether the consideration given in exchange for the waiver and accepted by the employee exceeds the benefits to which the employee was already entitled

by contact or law. Cirillo, 862 F.2d at 451.

---

1. Plaintiff executed the release on October 2, 1990, approximately two weeks before the enactment of the Older Workers Benefit Protection Act ("OWBPA"), 29 U.S.C. & 626(f), which sets forth specific criteria for when a waiver or rights under the ADEA will be deemed knowing and voluntary. The effective date of the OWBPA was October 16, 1990, and the Act is prospective only. Consequently, the standard applicable to determine the enforceability of the Plaintiff's release is the federal common law that existed prior to the enactment of the OWBPA. Gormain v. Brown-Forman Corp. , 963 F.2d 323 (11th Cir. 1992) (OWBPA inapplicable to suit filed before

Congress passed statute); Ulvin v. Northwestern Life, 943 F.2d 862 (8th Cir. 1991), cert. denied, 112 S. Ct. 970, 117 L.Ed.2d 135 (1992) (enactment of OWBPA not evidence of Congress' intent with regard to waivers signed before Act, because Act states that it shall not apply to waivers occurring before it's enactment)

Application of the Cirillo factors to this case leads to the conclusion that the Plaintiff's release was knowing and voluntary.

First, the language of the release is straightforward, clear and unambiguous. It identifies the consideration and specifically informs the employee that by signing, he waives "any and all claims, liabilities,

demands, damages and causes of action, known or unknown..." including "claims arising out of my employment and termination therefrom..." under any federal, state or local laws prohibiting employment discrimination, and it specifically refers to common law claims and claims under the ADEA.

Second, plaintiff is a high school gradate and a computer programmer with more than two decades of experience in the business world. This educaton and experience suggests more than a modicum of intelligence and an ability to deal with matters of importance in his life. See Pears v. Sang, 718 F. Supp. 441, 451 (W.D. Pa. 1989) (Plaintiff's high school diploma and attendance on one-year at secretarial school held to be sufficient

education and experience to execute release). the factor of education and experience is a minimal threshold, and it certainly is satisfied here.

Third, Plaintiff was given no deadline to sign the release. Rather, IBC sent the release to plaintiff on September 27, 1990 and invited plaintiff to contact the Director of_____

2. The number and content of the documents filed pro se suggest a great deal of sophistication on the plaintiff's part.

Employee Relations with any question regarding the severance package and the release. Five days later, on October 2, 1990, plaintiff signed the release and in a letter to the Court dated November 11, 1992, he concedes that he had until

October 5, 1990 to return the release. Thus plaintiff had 6 business days, 8 calendar days to consider the release. This is not a situation in which the employer required that the release had to be signed during an exit interview. Plaintiff had ample time to deliberate and consider the consequences of signing the release. Plaintiff signed the release within several days of receiving it, and by his own admission, he signed it three days before the deadline.

Fourth, the release itself alerted the plaintiff to the fact that he could have "claims arising our of [his] employment and termination... arising under... federal, state or local laws prohibiting employment discrimination ... ", and, in particular, the ADEA. By

signing the release, plaintiff acknowledged that he was giving up his right to assert any such claims.

Fifth, plaintiff expressly acknowledged in the release that he had "been given the opportunity to consult with an attorney or personal representative before signing this General Release". The relevant inquiry on this factor is "whether consultation with a lawyer was encouraged orally or in writing, not whether a plaintiff in fact received the benefit of counsel," Cook v. Buzton, Inc., 793 F. Supp. 622, 625 (W.D. Pa 1992); Ponzoni v. Kraft General foods, Inc., 774 F. Supp. 299, 312 (D. N.J. 1991) ("Even where a plaintiff does not seek counsel, an express statement regarding his or her right to do so

satisfies this factor."), aff'd, 968 F.2d 14 (3d Cir. 1992); see also Cirillo, 862 F.2d at 445; Coventry, 856 F. 2d at 524 ("significant is the absence in the record of any indication that [plaintiff] was encouraged by [his employer] to consult an attorney prior to signing the release") In the instant case, plaintiff acknowledged in the text of the release that he had been given the opportunity to consult with an attorney or personal representative, and the fact is, he did consult two lawyers prior to signing.

Sixth, plaintiff certainly had the opportunity to negotiate the terms of the release. That he chose not to do so does not weigh against it enforceability. See Cirillo, 862 F.2d at 454 (release enforceable even where terminated

employee was not afforded opportunity to negotiate it terms); Ponzoni, 774 F. Supp. at 312-13 (absence of plaintiff's opportunity to specifically negotiate language of release not strong indicia that waiver was unknowing or involuntary). In any event, the letter of September 27, 1990 invited him to ask questions about the severance package which was contingent upon execution of the release.

Finally, in exchange for signing the release, plaintiff received from IBC a severance package to which he otherwise would not have been entitled, Specifically, plaintiff received severance pay through January 3, 1991, current health and life insurance benefits through January 3, 1991, and

career continuation assistance through Manchester. Plaintiff would not have received these incentives had he not released his claims against IBC. Plaintiff does dispute that the consideration that he received in exchange for signing the release exceeded the benefits to which he other wise would have been entitled by law or contract. Therefore, there was ample consideration to support the release.

Thus, the totality of the circumstances surrounding plaintiff's signing of the General Release demonstrates that the release was knowing and voluntarily executed by him and is a complete bar to this action against IBC. See Cirillo, 862 F 2d at 455 (affirming grant of summary judgment in favor of employer on

ADEA claim on grounds that release was knowing and voluntary); Pilon v. University of Minnesota, 710 F. 2d 466 (8th Cir. 1993) (summary judgment upheld despite petitioner's subjective belief that unambiguous release did not bar certain Title VII claims); Mercer v. Richardson Brands, Inc., No. 91-4033, 1992 WL 164711, 1992 U.S. Dist LEXIS 9302, (E.D. Pa. July 2, 1992 (granting summary judgement in favor of employer on Title VII and PHRA claims on grounds of valid settlement agreement); Mullen v. New Jersey Steel Corp., 733 F. Supp. 1534. 1543-47 (D. N.J. 1990) (granting summary judgment in favor of employer on claims under ADEA, New Jersey Law Against Discrimination, and New Jersey common law on grounds of severance agreement containing valid release); Pears v Sang,

718 F. Supp. 441, 445-47 (W.D. Pa. 1989) (granting summary judgment in favor of employer on ADEA claim on grounds of valid release).

Plaintiff's complaint does not state an actionable claim for civil conspiracy, and that portion of the plaintiff's complaint purporting to state such a claim will be dismissed with prejudice. Plaintiff alleges that IBC and Manchester "conspired to discharge him and other long-term IBC employees as part of a plan or scheme to discharge white males because of their sex and race. (complaint && 14-15).

Regardless of whether one reads plaintiff's complaint to allege conspiracy to violate the ADEA, Title VII

or the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. &951 et seq., plaintiff's claim for civil conspiracy must be dismissed for failure to state a claim. The United States Supreme Court has expressly stated that no cause of action exists for conspiracy to violate Title VII, Great AM. Fed Sav. & Loan Ass'n v. Novotny, 442 U.S. 336 (1979), and numerous courts have applied the Novotny rationale to the ADEA. See, e.g., Jones v. Baskin, Flaherty, Elliott and Mannino, P.C., 738 F. Supp. 937, 940-41 (W.D. Pa. 1989) (granting summary judgment in favor of employer on plaintiff's claim for conspiracy to violate ADEA), aff'd, 897 F.2d 522 (3d Cir.), cert. denied, 111 S. Ct. 47, 112 L. Ed. 2d 23 (1990); Moorhouse v. Boeing Co., 501 F. Supp.

390, 394 (E.D. Pa.) (noting that, based on Novotny, plaintiff conceded propriety of directed verdict on count alleging conspiracy to violate ADEA) aff'd, 639 F.2d 774 (3d Cir. 1980).

To the extent that plaintiff's complaint is read to allege conspiracy to violate the PHRA, the same result obtains. It is seemingly well established under Pennsylvania law that an at-will employee such as plaintiff does not have common law cause of action arising from discrimination prohibited by the PHRA, and that any claim by an employee for unlawful discrimination under state law is limited to that provided by the statute. Clay v. Advanced Computer Applications, Inc. 522 Pa. 86, 89-90, 559 A. 2d 917, 918-19 (1989). See also,

Murray v. Commercial Union Ins. Co., 782 F.2d 432, 436 (3rd Cir. 1986) (refusing to recognize common law actions for claims that could be raised under PHRA); Bruffett v. Warner Communications, Inc., 692 F.2d 910 (3d Cir. 1982) precluding common law tort claim premised on handicapped discrimination); McWilliams v. AT&T Info. Sys., Inc., 728 F. Supp. 1186, 1192 (W.D. Pa. 1990) (plaintiff could only pursue cause of action based on discrimination under PHRA); Householder v. Kensington Mfg. Co., 360 Pa. Super. 290, 294, 520 A.2d 461, 464, appeal denied, 516 PA. 629, 532 A.2d 1137 (1987) (expressly approved of in Clay) (party alleging unlawful discrimination cognizable under PHRA must utilize administrative remedies available through PHRC before asserting cause of action in

court).

Because plaintiff's underlying allegation is that he was discharged because of his age, sex, and race, he should have availed himself of the statutory remedy under PHRA. Plaintiff cannot accomplish and end run around the carefully constructed statutory scheme established under the PHRA merely by creatively pleading a cause of action for civil conspiracy. As the court in Clay made clear, there exists no common law cause of action against an employer for termination of an at-will employment relationship, regardless of whether that claim is pleaded as a claim for wrongful discharge or a claim for civil conspiracy.

Fed. R. Civ. P. 56(c) instructs the court to render summary judgement forthwith "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law". A fact is material if it could affect the outcome of the suit under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 447 U.S. 242, 255 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." Id. (citing 10 A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, &2725 at 93-95 (1983). Further, the factual dispute must be "genuine". The evidence must be such "that a reasonable jury could return a

verdict in favor of the non-moving party". Id.

The essence of the plaintiff's response to the defense of release is that at the time he signed the release, he did not know he had a discrimination claim. Whether or not he knew he had a discrimination claim is immaterial. What he did know is that he was waiving his right to assert such a claim, and that fact is not disputed. I conclude, therefore, that the release is valid and binding and is a complete bar to this action.

Accordingly, summary judgement will be granted in favor of IBC and against the plaintiff on plaintiff's claims of age discrimination under the ADEA and sex and

race discrimination under Title VII.

Plaintiff's claims based on civil conspiracy will be dismissed for failure to state a cause of action and plaintiff's claims based on violation of section 510 of ERISA will be dismissed as withdrawn.

IN THE UNTIED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. CIVIL ACTION

v.

INDEPENDENCE BLUE CROSS
and
MANCHESTER, INC. No. 92-4249

ORDER

AND NOW, this 13TH day of JANUARY, 1993, upon consideration of the defendant's motion to dismiss or for summary judgment, it is hereby

ORDERED that summary judgement is GRANTED in favor of the defendant Independence Blue Cross and against the plaintiff Joseph Bennett, Jr.

It is further ordered that plaintiff's claim based on a violation of Section 510 of ERISA is DISMISSED as WITHDRAWN.

BY THE COURT:

SIGNATURE

JOSEPH L. McGLYNN JR. J.

(ATTACHMENT "B")

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. :

v.

INDEPENDENCE BLUE CROSS

and Civil Action

MANCHESTER, INC. NO. 92-4249

FILED MAR -2 1993

MEMORANDUM OF DECISION

McGLYNN, J. MARCH 2, 1993

FACTUAL BACKGROUND

The defendant, Manchester Inc., is in the business of providing career counseling and outplacement services. outplacement services consist of counseling persons who have become

unemployed in the various strategies for successfully finding new employment. Such services include resume preparation and the identification of career choices and opportunities. Manchester is not an employment agency: it does not attempt to match candidates looking for employment with appropriate jobs. Rather, Manchester counsels individuals in how to conduct a job search on their own and how to present themselves in the best light for the jobs they choose to pursue. Manchester is retained by employers to provide their service to employees who have been terminated. The client companies pay for Manchester's services. Independence Blue Cross ("IBC") has hired Manchester from time to time to counsel IBC employees who have been terminated. IBC and Manchester are wholly independent

companies.

IBC informed Manchester in late September of 1990 that it intended to terminate approximately 39 employees and requested Manchester to provide its services to those employees. Manchester took no part in determining which employees, if any, were to be terminated. Among the employees who were terminated by IBC was the plaintiff in this case, Joseph Bennett, Jr. Mr. Bennett attended the three day seminar presented by Manchester which commenced on Friday September 28, 1990 and ended on Tuesday, October 2, 1990.

Plaintiff brought this suit against Manchester alleging that Manchester committed a fraud upon him which induced

him to sign a release (which Manchester was not a party to) which relieved IBC from liability for discrimination against him on the basis of his age, sex, and race by various representations and actions by Manchester representatives. Plaintiff also alleged under state law that Manchester conspired with IBC to discriminate against him to interfere with his attainment of employee benefits in violation of the Employee Retirement Income Security Act ("ERISA") 29 U.S.C. &&621-634, to discriminate against him on the basis of his age in violation of the Age Discrimination in Employment Act ("ADEA"), and discriminate against him on the basis of his sex and race in violation of Title VII of the Civil Rights Act of 1964.

DISCUSSION

Before the court is defendant Manchester's Motion for Summary Judgement under Federal Rule of Civil Procedure 56. Defendants' motion will be granted for the reasons that follow.

Rule 56 of the Federal Rules of Civil Procedure instructs the court to render summary judgment forthwith "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A fact is material if it could affect the outcome of the suit under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). "Factual disputes that are

irrelevant or unnecessary will not be counted. "Id. (citing 10 A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure, &2725 at 93-95 (1983)). Further, the factual dispute must be "genuine." The evidence must be such "that a reasonable jury could return a verdict in favor of the non-moving party,." Id.

In his claims for fraud and conspiracy, plaintiff alleged that he was encouraged to sign the release by Manchester's statement that most of the individuals they counsel find jobs of equal or greater pay, Manchester's failure to tell him that the job market was lean, Manchester's scheduling the seminars to impede plaintiff from seeking legal advise concerning the IBC release

as well as impeding him from finding out that the job market was lean by job hunting during those hours, and Manchester's advising him not to start his job search until after he attended the seminars.

The Pennsylvania Supreme Court has stated that "fraud consists in anything calculated to deceive, whether by single act or combination, or by suppression of truth, or a suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture. It is any artifice by which a person is deceived to his disadvantage. Tunis Brothers Co. Inc. v. ford Motor Company, 952 F.2d 715 (3d Cir. 1991) (quoting In re McCellan's Estate 365 Pa 401, 407, 75 A.2d 595, 598

(1950)(internal citations omitted)).

The plaintiff failed to offer any facts which support his position that he was defrauded by Manchester's actions and statements. Plaintiff did not dispute the truth of Manchester's statement that most of the individuals they counsel find employment at equal or better pay and plaintiff did not offer any other concrete examples of statements that allegedly defrauded him. Although it is true that the seminars were offered during working hours, the plaintiff offered no proof that Manchester's choice of hours was designed to impede him from seeking legal counsel or prevent him from job hunting rather than for the simple convenience of those attending Manchester's seminars. Similarly, no

facts were offered which indicate that Manchester's advice to stay his job hunt until after the tree day seminar was to prevent him from finding out that the job market was lean rather than to wait until he received the benefit of their counsel to conduct a more effective job search. In short, there is no evidence that any actions or statements by Manchester were calculated to deceive Mr. Bennett. The fact is that Plaintiff did seek and obtained legal counsel of his own choosing. After which he signed the release.

Plaintiff's complaint does not state an actionable claim for civil conspiracy, and that portion of plaintiff's complaint purporting to state such a claim will be dismissed with prejudice. Regardless of

whether one reads plaintiff's complaint to allege conspiracy to violate the ADEA, Title VII or the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. &951 et seq., Plaintiff claim for civil conspiracy must be dismissed for failure to state a claim. The United States Supreme Court has expressly stated that no cause of action exists for conspiracy to violate Title VII, Great Am. Fed. Sav. & Loan Ass'n v. Novotny, 442 U.S. 336 (1979), and numerous courts have applied the Novotny rationale to the ADEA. See, e.g., Jones v. Baskin, Flaherty, Elliott and Mannino, P.C., 738 F. Supp. 937, 940-41- (W.D. Pa. 1989) (granting summary judgment in favor of employer on plaintiff's claim for conspiracy to violate ADEA), aff'd, 897 F.2d 522 (3d Cir.), cert. denied, 111 S. Ct. 47, 112

L. Ed. 2d 23 (1990); Moorhouse v. Boeing Co., 501 F. Supp. 390, 394 (E.D.) Pa.) (noting that, based on Novotny, plaintiff conceded propriety of directed verdict on count alleging conspiracy to violate ADEA), 1. see proir ruling. aff'd, 639 F.2d 774 (3d Cir. 1980). Moreover, if the plaintiff's complaint is read to include an allegation of conspiracy to violate the PHRA the same result obtains. It is seemingly well established under Pennsylvania law that an at-will employee such as the plaintiff does not have a common law cause of action arising from discrimination prohibited by the PHRA, and that any claim by an employee for unlawful discrimination under state law is limited to that provided by the statute. Clay v. Advanced Computer Applications, Inc., 522 Pa. 86, 86-90,

559 A, 2d 917, 918-0919 (1989).

Therefore, summary judgment will be granted in favor of the defendant and against the plaintiff on plaintiff's claim of fraud and plaintiff's claims based on civil conspiracy will be dismissed for failure to state a cause of action. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. :

v.

INDEPENDENCE BLUE CROSS

and Civil Action

MANCHESTER, INC. NO. 92-4249

ORDER

AND NOW, this 2nd day of March, 1993, upon consideration of the defendant's motion for Summary Judgment and defendant's response thereto, it is hereby

ORDERED that Summary Judgment is GRANTED in favor of the defendant, Manchester, Inc. and against the plaintiff, Joseph Bennett Jr.

BY THE COURT:

JOSEPH L. MCGLYNN, JR. J.

(ATTACHMENT "C")

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. :

v.

INDEPENDENCE BLUE CROSS

and Civil Action

MANCHESTER, INC. NO. 92-4249

MEMORANDUM OF DECISION

McGLYNN, J. JUNE 29, 1993

Final judgement in this matter was entered on March 3, 1993. Under date of 6/18/93, plaintiff submitted a letter request to this court asking for an "[e]xtension [of] [t]ime [to] [a]ppeal." However, the docket shows that a notice of appeal had been filed on June 3, 1993.

Presumably, plaintiff seeks to legitimize the late filing by extending the time to include the June 3rd date.

In view of the pending appeal to the Court of Appeals, it is questionable whether this court has jurisdiction to act on the request.

But assuming that this court has the power to act, the request would have to be denied since Rule 4(a) (6) of the Rules of Appellate Procedure provides that a party who did not receive notice of the entry of the final order or judgment within 21 days the district court "may upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier reopen the time for

appeal..." (emphasis added).

According to plaintiff's letter request paragraph 4, it is apparent that plaintiff had notice of the final order at the latest on May 19, 1993. Therefore, in order to obtain relief under FRAP 4(a)(6), the request for extension of time had to be filed on or before May 26, 1993.

Under these circumstances, this court cannot grant an extension. See FRAP 26(h)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH BENNETT, JR. :

v. FILE JUN 29 1993

INDEPENDENCE BLUE CROSS

and Civil Action

MANCHESTER, INC. NO. 92-4249

ORDER

AND NOW, this 29th day of JUNE, 1993, upon consideration of the letter request addressed to the clerk of the Court under date of June 18, 1993 and received by the Clerk on June 22, 1993, it is hereby ORDERED that:

1. The letter request is hereby docketed as a motion for an extension of time to file a notice of appeal under FRAP 4(a)(6).

2. The motion is DENIED for the reasons stated in the attached Memorandum.

BY THE COURT

signature

Joseph L. Mcglynn Jr.

(ATTACHMENT "D")*

CPS-27 AUGUST 12, 1993

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 93-1550

JOSEPH BENNETT

vs.

INDEPENDENCE BLUE CROSS, ET AL.

(E.D. PA. CIV. NO. 92-04249)

Present: MANSMANN, HUTCHINSON AND SCIRICA, CIRCUIT JUDGES

Submitted are:

(1) By the clerk for possible dismissal due to a jurisdictional defect;

(2) Appellant's motion to file an appendix and expand the record;

(3) Appellant's response;

(4) Appellee Independence Blue Cross' response in the above-captioned case.

Respectfully ,

P. Douglas Sisk

Clerk

PDS/LLB

_____O R D E R_____

The Foregoing

(hand written)

Appeal is dismissed since the appellant did not file the notice of appeal during the time period, set by law, in which the

court of appeal would have jurisdiction.

The other motions are denied as moot.

By the court

Carol Los Mansmann

Circuit Judge

Dated Aug 31 1993

"initials"

(unable to distinguish initials at bottom because copy received was not legible.)

(ATTACHMENT "E")

CPS-28 AUGUST 12, 1993

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 93-1680

JOSEPH BENNETT

vs.

INDEPENDENCE BLUE CROSS, ET AL.

(E.D. PA. CIV. NO. 92-04249)

Present: MANSMANN, HUTCHINSON AND SCIRICA, CIRCUIT JUDGES

Submitted are:

(1) By the clerk is the within appeal for possible summary action pursuant to Chapter 10.6 of the Internal Operating Procedures;

(2) Appellant's summary action response dated July 27, 1993, which the Court also may wish to treat as a motion for counsel on appeal;

(3) Appellant's motion to file an appendix and expand the record;

(4) Appellant's supplemental responses;

(5) Appellee' responses in the above-captioned case.

Respectfully ,

P. Douglas Sisk

Clerk

PDS/LLB

_____O R D E R_____

The Foregoing

(hand written)

Appeal will be considered for summary action pursuant to chapter 10.6 of ??? I.O.P.s. It is hereby ordered that the

order of the district court dated June 30, 1993 is summarily affirmed. The remaining motions are denied as moot.

CPS-27 AND CPS-28 AUGUST 12, 1993

Re: Bennett v. Independence Blue Cross, et al.

C.A. No. 93-1680

(E.D. Pa. Civ. No. 92-04249)

By the Court,

Carol Los Mansmann

Circuit Judge

Dated: Aug 24 1993

(ATTACHMENT "F1")

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 93-1550

JOSEPH BENNETT

Appellant

vs.

INDEPENDENCE BLUE CROSS, ET AL.

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge,
BECKER, STAFFLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH AND LEWIS, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT

Carol Los Mansmann

Circuit Judge

Sep 20 1993

(ATTACHMENT "F2")

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 93-1680

JOSEPH BENNETT

Appellant

vs.

INDEPENDENCE BLUE CROSS, ET AL.

SUR PETITION FOR REHEARING

Present: SLOVITER, Chief Judge,

BECKER, STAFPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH AND LEWIS, Circuit Judges.

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who

participated in the decision of this court and to all other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

Carol Los Mansmann

Circuit Judge

Sep 20 1993

(ATTACHMENT "G")

Note: EEOC TEST FORM 5 (8/1/89). All preprented information from form was not retyped.

CHARGE OF DISCRIMINATION

CHARGE NUMBER 170911048

State or local agency --- EEOC

name:

Mr. Joseph Bennett Jr.

312 Henderson Ave.

Millville, N.J. 08332

County: Cumberland

(609) 825-5388

NAME OF THE EMPLOYER

INDEPENDENCE BLUE CROSS

1901 MARKET STREET

PHILADELPHIA, PA 19103-1480

NUMBER OF EMPLOYEES -- 15+

CAUSE OF DISCRIMINATION BASED ON

SEX AND AGE

DATE MOST RECENT DISCRIMINATION TOOK PLACE --- 09/27/90

THE PARTICULARS ARE;

I. I was employed by Independence Blue Cross for approximately 10 years to September 27, 1990, at which time I was discharged from my position of Lead Systems Analyst.

II. Mr. Stan Adamczyk, who is one of the two Director's of Application, told me that I was being discharged because I was not qualified for the new system-unit.

III. I believe that I have been discriminated against because of age

(51) and my sex male. A total of 39 employees were discharged on 9/27/90 and I believe that the majority of those discharged were over 40 years of age. My group consisted of 5 employees (3 males and 2 females). Both of the females were retained while all of us males were discharged.

RECEIVED EEOC PHILADELPHIA 1991 JUN 3 PH 12:55

signature

JBennett Jr.

6/3/91